

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONFIRMATION CASE NO. 660 OF 2001

THE REPUBLIC

VERSUS

JOHN AYAMI

From the Second Magistrate's Court Sitting at
Mangundo: Criminal Case No. 5 of 2001

CORAM: HON. MR JUSTICE F.E. KAPANDA

Miss Nayeja, of Counsel for the State Advocate
Accused, Present and Unrepresented
Mr Kamanga, Official Interpreter

Date of hearing: 17th April 2003
Date of Order : 17th April 2003

Kapanda, J

ORDER IN CONFIRMATION

The convict, Josephy John Ayami, was convicted of the offence of breaking into a building and committing a felony therein. The conviction was entered after a full trial. He was sentenced to serve a custodial term of imprisonment of sixty months.

The facts upon which the conviction of the defendant were premised are as follows: The complainant's shop was broken into and many items were stolen. The incident was reported to police who carried out inquiries. The police later arrested the defendant who confessed that he, together with friends, broke into the complainant's building. There was no recovery of the property stolen.

The case was set down to consider reduction of sentence. I do not think that a sentence of five years is excessive or that it requires reduction. I am of this view because the sentence is well within the guideline set by the High Court. The High Court has said that for the offences of breaking into a building the starting point as regards the quantum of sentence should be 3 years. The sentence can be reduced or enhanced depending on mitigating or aggravating factors. The fact that the property stolen was not recovered is an aggravating factor that necessitated enhancement of sentence. Consequently, sentence of 5 years does not appear to be excessive. In that event, the sentence of 5 years is confirmed.

Pronounced in open Court this 17th day of April 2003 at
the Principal Registry, Blantyre.

F.E. KAPANDA

JUDGE